IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10001 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

HARMANBHAI DEVJIBHAI VASAVA - Respondent(s)

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Appearance :

MR KL PANDYA AGP for Petitioner No(s).: 1.

MR NILESH M SHAH for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 11/07/2005

ORAL JUDGMENT

1.0 The petitioner State has challenged the order dated 25.06.1999 passed by the Labour Court, Vadodara, in Reference

LCB No.810 of 1994, whereby the said reference was allowed.

2.0 The brief facts of the case are that the respondent herein was working in the Irrigation Department of the petitioner State since 16.07.1984 and was dismissed from the service on 01.09.1993. Feeling aggrieved by the said order, the respondent raised dispute, which came to be referred to the Labour Court by way of a reference. The Labour Court, Vadodara, by impugned order, allowed the said reference. Hence, this petition.

3.0 While admitting the matter on 23.07.2001, this Court has passed the following order;

> "The learned AGP Mr. I M Pandya stated that the Deputy Executive Engineer, Irrigation Scheme Division No.22, Vadodara has by his letter dated 09.03.2001 communicated the number of days worked by the respondent from the year 1984 to 1993. It is submitted on that basis that the respondent has not worked for more than 170 days in any year. He further stated that the petitioner proposes to enquire as to why no written statement was filed before the Labour Court and no documentary evidence was led and whether the Officer concerned was responsible for being negligent in defending the case. The learned AGP submitted that the result of such preliminary enquiry is proposed to be placed on record before this Court. In these facts and circumstances, Rule returnable on 06.08.2001. The learned counsel for the respondent waives service of rule. By way of interim relief, there shall be stay against the payment of back wages."

4.0 From the above order, it is very clear that the order

was ex-parte and that no written statement was filed. Hence, the Labour Court was justified in granting reinstatement with continuity in service to the respondent. However, so far as the grant of back wages is concerned, the Labour Court has not given any cogent reasons. Moreover, in view of the principle laid down by the Apex Court that a workman shall be entitled for back wages only if he has worked for the interim period, the respondent herein cannot be said to be entitled for back wages. In that view of the matter, the impugned order of the Labour Court as regards grant of back wages is required to be quashed and set aside.

5.0 In above view of the matter, this petition is partly allowed. The impugned order of the Labour Court qua directing the petitioner to reinstate the respondent with continuity in service is confirmed and the order qua granting back wages is quashed and set aside. However, it is made clear that the respondent shall be entitled for all the benefits from the date of the publication of the award or from 01.08.1999 onwards till he is reinstated in service. If the respondent is not reinstated in service so far, he shall be reinstated in service on or before 01.09.2005 and shall be given all the benefits from the date mentioned aforesaid. The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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